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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2016-024066

13 **ROGER DALE ROBINETT, M.D.**
14 **2759 Palmetto Drive**
Carlsbad, CA 92009

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

15 **Physician's and Surgeon's Certificate**
16 **No. G 87294**

17 Respondent.

18
19 **FINDINGS OF FACT**

20 1. On or about May 21, 2018, Kimberly Kirchmeyer (Complainant), in her official
21 capacity as the Executive Director of the Medical Board of California (Board), Department of
22 Consumer Affairs, filed Accusation No. 800-2016-024066 against Roger Dale Robinett, M.D.
23 (Respondent) before the Board. A true and correct copy of Accusation No. 800-2016-024066 is
24 attached as Exhibit A to the separate accompanying "Default Decision Evidence Packet" and is
25 incorporated by reference, in its entirety, as if fully set forth herein.

26 2. On or about August 6, 2004, the Board issued Physician's and Surgeon's Certificate
27 No. G 87294 to Respondent. The Physician's and Surgeon's Certificate expired on July 31, 2014,
28 and has not been renewed. (Exhibit B.)

1 3. On or about May 21, 2018, Dianne Richards, an employee of the Board, served a true
2 and correct copy of Accusation No. 800-2016-024066, Statement to Respondent, Notice of
3 Defense (two copies), Request for Discovery, and Government Code sections 11507.5., 11507.6,
4 and 11507.7, by Certified and First Class Mail to Respondent's address of record with the Board,
5 which was and is 2759 Palmetto Drive, Carlsbad, CA 92009. (Exhibit C.)

6 4. On or about May 25, 2018, the Board received a signed U.S. Postal Service return
7 receipt card indicating the aforementioned documents had been delivered. (Exhibit D.)

8 5. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c).

10 6. Business and Professions Code section 118 states:

11 "...

12 "(b) The suspension, expiration, or forfeiture by operation of law of a license
13 issued by a board in the department, or its suspension, forfeiture, or cancellation by
14 order of the board or by order of a court of law, or its surrender without the written
15 consent of the board, shall not, during any period in which it may be renewed,
16 restored, reissued, or reinstated, deprive the board of its authority to institute or
17 continue a disciplinary proceeding against the licensee upon any ground provided by
18 law or to enter an order suspending or revoking the license or otherwise taking
19 disciplinary action against the license on any such ground.

20 "..."

21 7. Government Code section 11506 states:

22 "(a) Within 15 days after service of the accusation . . . the respondent may file
23 with the agency a notice of defense

24 "..."

25 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
26 files a notice of defense . . . and the notice shall be deemed a specific denial of all
27 parts of the accusation not expressly admitted. Failure to file a notice of defense . . .
28 shall constitute a waiver of respondent's right to a hearing, but the agency in its

1 discretion may nevertheless grant a hearing. Unless objection is taken as provided in
2 paragraph (3) of subdivision (a), all objections to the form of the accusation . . . shall
3 be deemed waived.

4 “...”

5 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
6 of Accusation No. 800-2016-024066. Therefore, Respondent waived his right to a hearing on the
7 merits of Accusation No. 800-2016-024066. (Exhibit E.)

8 9. On or about June 7, 2018, V. Cruz, an employee of the Office of the Attorney
9 General, served a Courtesy Notice of Default for Accusation No. 800-2016-024066, by regular
10 mail to Respondent’s address of record, which was and is 2759 Palmetto Drive, Carlsbad, CA
11 92009. The Courtesy Notice of Default attached a copy of the Accusation and Notice of Defense
12 previously served upon Respondent and advised Respondent that if he failed to take action to file
13 a Notice of Defense, the Board would enter a Default Decision against his license, which may be
14 revoked or suspended without any hearing. (Exhibit F.)

15 10. To date, Respondent has not submitted a Notice of Defense to the Board, nor has he
16 given any notice to Complainant of his intent to contest the Accusation. (Exhibit E.)

17 11. Government Code section 11520 states:

18 “(a) If the respondent either fails to file a notice of defense . . . , the agency may
19 take action based upon the respondent’s admissions or upon other evidence and
20 affidavits may be used as evidence without any notice to respondent

21 “...”

22 12. Pursuant to its authority under Government Code section 11520, the Board hereby
23 finds Respondent is in default. The Board will take action without further hearing and, based on
24 Respondent’s express admissions by way of default and the evidence before it as contained in the
25 Default Decision Evidence Packet, hereby finds that the charges and allegations in Accusation
26 No. 800-2016-024066, and each of them, separately and severally, are true and correct.

27 ///

28 ///

1 13. Business and Professions Code section 2227 states:

2 “(a) A licensee whose matter has been heard by an administrative law judge of
3 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
4 Code, or whose default has been entered, and who is found guilty, or who has entered
5 into a stipulation for disciplinary action with the board, may, in accordance with the
6 provisions of this chapter:

7 “(1) Have his or her license revoked upon order of the board.

8 “(2) Have his or her right to practice suspended for a period not to exceed one
9 year upon order of the board.

10 “(3) Be placed on probation and be required to pay the costs of probation
11 monitoring upon order of the board.

12 “(4) Be publicly reprimanded by the board. The public reprimand may include
13 a requirement that the licensee complete relevant educational courses approved by the
14 board.

15 “(5) Have any other action taken in relation to discipline as part of an order of
16 probation, as the board or an administrative law judge may deem proper.

17 “. . .”

18 14. Business and Professions Code section 2234 states:

19 “The board shall take action against any licensee who is charged with
20 unprofessional conduct. In addition to other provisions of this article, unprofessional
21 conduct includes, but is not limited to, the following:

22 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
23 abetting the violation of, or conspiring to violate any provision of this chapter.

24 “. . .”

25 15. Unprofessional conduct under section 2234 of the Code is conduct which breaches
26 the rules or ethical code of the medical profession, or conduct which is unbecoming a member in
27 good standing of the medical profession, and which demonstrates an unfitness to practice
28 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

1 16. Business and Professions Code section 2236 states:

2 “(a) The conviction of any offense substantially related to the qualifications,
3 functions, or duties of a physician and surgeon constitutes unprofessional conduct
4 within the meaning of this chapter. The record of conviction shall be conclusive
5 evidence only of the fact that the conviction occurred.

6 “(b) The district attorney, city attorney, or other prosecuting agency shall notify
7 the Division of Medical Quality¹ of the pendency of an action against a licensee
8 charging a felony or misdemeanor immediately upon obtaining information that the
9 defendant is a licensee. The notice shall identify the licensee and describe the crimes
10 charged and the facts alleged. The prosecuting agency shall also notify the clerk of
11 the court in which the action is pending that the defendant is a licensee, and the clerk
12 shall record prominently in the file that the defendant holds a license as a physician
13 and surgeon.

14 “(c) The clerk of the court in which a licensee is convicted of a crime shall,
15 within 48 hours after the conviction, transmit a certified copy of the record of
16 conviction to the board. The division may inquire into the circumstances surrounding
17 the commission of a crime in order to fix the degree of discipline or to determine if
18 the conviction is of an offense substantially related to the qualifications, functions, or
19 duties of a physician and surgeon.

20 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
21 deemed to be a conviction within the meaning of this section and Section 2236.1. The
22 record of conviction shall be conclusive evidence of the fact that the conviction
23 occurred.”²

24 _____
25 ¹ California Business and Professions Code section 2002, as amended and effective
26 January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in
27 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical
28 Board of California,” and references to the “Division of Medical Quality” and “Division of
Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

² There is a nexus between a physician’s use of alcoholic beverages and his fitness to
practice medicine, established by the Legislature in section 2239, “in all cases where a licensed

1 17. Business and Professions Code section 2239 states:

2 “(a) The use or prescribing for or administering to himself or herself, of any
3 controlled substance; or the use of any of the dangerous drugs specified in Section
4 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
5 or injurious to the licensee, or to any other person or to the public, or to the extent that
6 such use impairs the ability of the licensee to practice medicine safely or more than
7 one misdemeanor or any felony involving the use, consumption, or
8 self-administration of any of the substances referred to in this section, or any
9 combination thereof, constitutes unprofessional conduct. The record of the
10 conviction is conclusive evidence of such unprofessional conduct.

11 “(b) A plea or verdict of guilty or a conviction following a plea of nolo
12 contendere is deemed to be a conviction within the meaning of this section. The
13 Division of Medical Quality may order discipline of the licensee in accordance with
14 Section 2227 or the Division of Licensing may order the denial of the license when
15 the time for appeal has elapsed or the judgment of conviction has been affirmed on
16 appeal or when an order granting probation is made suspending imposition of
17 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
18 the Penal Code allowing such person to withdraw his or her plea of guilty and to enter
19 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
20 complaint, information, or indictment.”

21 18. California Code of Regulations, title 16, section 1360, states:

22 “For the purposes of denial, suspension or revocation of a license, certificate or
23 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
24 or act shall be considered to be substantially related to the qualifications, functions or
25 duties of a person holding a license, certificate or permit under the Medical Practice
26 Act if to a substantial degree it evidences present or potential unfitness of a person

27 physician used alcoholic beverages to the extent or in such a manner as to pose a danger to
28 himself or others.” (*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407,
1411.)

1 holding a license, certificate or permit to perform the functions authorized by the
2 license, certificate or permit in a manner consistent with the public health, safety or
3 welfare. Such crimes or acts shall include but not be limited to the following:
4 Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
5 violation of, or conspiring to violate any provision of the Medical Practice Act.”

6 19. Respondent has subjected his Physician’s and Surgeon’s Certificate No. G 87294 to
7 disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Business and
8 Professions Code, in that he has been convicted of a crime substantially related to the
9 qualifications, functions, or duties of a physician, as more particularly alleged hereinafter:

10 (a) On or about June 26, 2016, Officers J.A. and E.C. of the California
11 Highway Patrol observed Respondent’s vehicle stopped at the limit line at a red light
12 at or near Sea World Drive in San Diego, California. Respondent’s vehicle slowly
13 began moving into the intersection against the red light, causing oncoming drivers to
14 honk their horns at Respondent and maneuver their vehicles around Respondent’s
15 vehicle. The officers activated their overhead red lights and positioned their vehicle
16 behind Respondent’s vehicle. Respondent was instructed to yield and, after several
17 commands, finally did so. (Exhibit G.)

18 (b) Upon contact with Respondent, Officer J.A. smelled the odor of alcohol
19 coming from inside Respondent’s vehicle and observed that Respondent had glassy
20 eyes, sluggish movements, and slow speech. Respondent told Officer J.A. that he
21 was on his way to pick up his mother-in-law at the SEA-TAC airport in Seattle,
22 Washington. Officer J.A. asked Respondent to exit his vehicle and they moved to the
23 sidewalk next to the rear of the vehicle. Officer J.A. continued to smell the odor of
24 alcohol coming from Respondent’s breath and person. Officer J.A. asked Respondent
25 to provide his identification, and Respondent provided a government-issued
26 identification card from Mexico. Respondent told Officer J.A. that he left his home
27 in Carlsbad, California and headed north towards the airport in Seattle, Washington,
28 but became lost. He stated that he was supposed to pick up his mother-in-law

1 approximately one and a half hours ago. When asked if he knew where he was
2 presently, Respondent told Officer J.A. that he was in the State of Washington.
3 Respondent had difficulty comprehending that he was still in the State of California
4 and insisted that he was in Washington. (Exhibit G.)

5 (c) Based upon Respondent's objective signs and symptoms of impairment,
6 Officers J.A. and E.C. requested assistance and Officer Z.F. responded. Respondent
7 told Officer Z.F. that he had consumed one to two glasses of wine at dinner. Officer
8 Z.F. observed the odor of alcohol coming from Respondent's breath and person,
9 slurred and thick speech, and red eyes. Officer Z.F. administered standardized field
10 sobriety tests, which Respondent failed to complete satisfactorily. Officer Z.F. placed
11 Respondent under arrest for driving under the influence of alcohol. Respondent
12 submitted to a breath test, which yielded a blood alcohol concentration (BAC) level
13 of 0.160% and 0.158%, respectively. (Exhibit G.)

14 (d) On or about August 2, 2016, the San Diego County District Attorney filed
15 a criminal complaint against Respondent in the matter of *The People of the State of*
16 *California v. Roger Dale Robinett*, Case No. M220364. Count One of the complaint
17 charged Respondent with driving under the influence of alcohol, in violation of
18 California Vehicle Code section 23152(a), a misdemeanor. Count Two of the
19 complaint charged Respondent with driving while having a BAC level of 0.08% or
20 more, in violation of California Vehicle Code section 23152(b), a misdemeanor.
21 Count Three of the complaint charged Respondent with driving without a valid
22 California driver's license, in violation of California Vehicle Code section 12500(a),
23 a misdemeanor. (Exhibit H.)

24 (e) On or about October 26, 2016, Respondent was convicted upon his plea
25 of guilty to Count Two of the complaint. On or about the same date, Respondent was
26 sentenced to probation for five years on the following terms and conditions: (1) pay
27 various fines and fees; (2) enroll in and complete a Public Service Program; (3) do
28 not drive a motor vehicle with any measureable amount of alcohol or drugs in his

1 blood; (4) submit to any test at the request of a peace officer for the detection of
2 alcohol or drugs in the blood; (5) do not violate any laws regarding driving a motor
3 vehicle while under the influence or in the possession of alcohol, drugs, or both; (6)
4 do not drive a motor vehicle without a valid license liability insurance; (7) enroll in
5 and complete the First Conviction Program; and (7) placement of the ignition
6 interlock device for one year. (Exhibit I.)

7 (f) On or about August 28, 2017, an investigator for the Board mailed a letter
8 to Respondent's address of record, requesting a Letter of Explanation from
9 Respondent regarding his June 26, 2016, arrest. In addition, the letter requested that
10 Respondent complete a Criminal Action Reporting form regarding the October 26,
11 2016, conviction. The letter requested Respondent's response by September 15,
12 2017. On or about October 2, 2017, the Board received the original letter mailed to
13 Respondent on August 28, 2017. The envelope was marked "Return to Sender –
14 Unclaimed - Unable to Forward." (Exhibit J.)

15 (g) On or about October 2, 2017, the Board investigator called and left a
16 voice message with Respondent. On or about October 9, 2017, the Board investigator
17 spoke with Respondent regarding the requested Letter of Explanation. Respondent
18 stated that he was living in Mexico and was currently traveling in Europe. He further
19 stated that he was no longer practicing medicine in California and did not have a valid
20 California medical license. Respondent stated that he was "done with California" and
21 hung up the phone.

22 (h) On or about October 17, 2017, the Board investigator called Respondent
23 again and left a voice message, reiterating the request for a Letter of Explanation.

24 (i) On or about November 9, 2017, having received no response from
25 Respondent, the Board investigator mailed a letter to Respondent's address of record,
26 regarding scheduling an interview to discuss his June 26, 2016, arrest. The letter
27 requested that Respondent contact the Board investigator by November 22, 2017.
28 The letter was also emailed to Respondent. On or about November 9, 2017, the email

1 was returned as "Undeliverable" and, on or about December 13, 2017, the Board
2 received the original letter mailed to Respondent on November 9, 2017, which was
3 marked "Return to Sender - Unclaimed - Unable to Forward." (Exhibit K.)

4 (j) To date, Respondent has not provided a Letter of Explanation to the
5 Board and he has not responded to the Board's request for an interview.

6 20. Respondent has further subjected his Physician's and Surgeon's Certificate No.
7 G 87294 to disciplinary action under sections 2227 and 2234, as defined by section 2239,
8 subdivision (a), of the Business and Professions Code, in that he has used, or administered to
9 himself, alcoholic beverages to the extent, or in such a manner, as to be dangerous or injurious to
10 himself, another person, or the public, as more particularly alleged paragraph 19(a) to 19(e),
11 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

12 21. Respondent has further subjected his Physician's and Surgeon's Certificate No.
13 G 87294 to disciplinary action under sections 2227 and 2234 of the Business and Professions
14 Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical
15 profession, or conduct which is unbecoming to a member in good standing of the medical
16 profession, and which demonstrates an unfitness to practice medicine, as more particularly
17 alleged in paragraph 19(a) to 19(e), above, which are hereby incorporated by reference and
18 realleged as if fully set forth herein.

19 22. Respondent has further subjected his Physician's and Surgeon's Certificate No.
20 G 87294 to disciplinary action under section 2227 and 2234, subdivision (a), of the Business and
21 Professions Code, and section 1360 of title 16 of the California Code of Regulations, in that
22 Respondent has violated or attempted to violate, directly or indirectly, provisions or terms of the
23 Medical Practice Act, as more particularly alleged in paragraphs 19 to 21, above, which are
24 hereby incorporated by reference and realleged as if fully set forth herein.

25 **DETERMINATION OF ISSUES**

26 1. Based on the foregoing findings of fact, Respondent Roger Dale Robinett, M.D. has
27 subjected his Physician's and Surgeon's Certificate No. G 87294 to discipline.

28 2. The Board has jurisdiction to adjudicate this matter by default.

1 3. Pursuant to its authority under Government Code section 11520, and based on the
2 evidence before it, the Board hereby finds that the charges and allegations contained in
3 Accusation No. 800-2016-024066, and the Findings of Fact contained in paragraphs 19 through
4 22, above, and each of them, separately and severally, are true and correct.

5 4. Pursuant to its authority under Government Code section 11520, and by reason of the
6 Findings of Fact contained in paragraphs 1 through 22, above, and Determination of Issues 1, 2,
7 and 3, above, the Board hereby finds that Respondent Roger Dale Robinett, M.D. has subjected
8 his Physician's and Surgeon's Certificate No. G 87294 to disciplinary action in that:

9 (a) Respondent was convicted of a crime substantially related to the
10 qualifications, functions, or duties of a physician, in violation of Business and
11 Professions Code sections 2227 and 2234, as defined by section 2236;

12 (b) Respondent used, or administered to himself, alcoholic beverages to the
13 extent, or in such a manner, as to be dangerous or injurious to himself, another
14 person, or the public, in violation of Business and Professions Code sections 2227
15 and 2234, as defined by section 2239, subdivision (a);

16 (c) Respondent engaged in conduct which breaches the rules or ethical code
17 of the medical profession, or conduct which is unbecoming to a member in good
18 standing of the medical profession, and which demonstrates an unfitness to practice
19 medicine, in violation of Business and Professions Code sections 2227 and 2234; and

20 (d) Respondent has violated or attempted to violate, directly or indirectly, a
21 provision or provisions, of the Medical Practice Act, in violation of Business and
22 Professions Code 2227 and 2234, subdivision (a), and section 1360 of title 16 of the
23 California Code of Regulations.

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ORDER

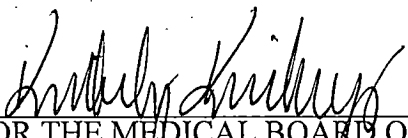
IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 87294, heretofore issued to Respondent Roger Dale Robinett, M.D., is revoked for each of the violations, separately and severally, of the Business and Professions Code set forth in the Determination of Issues, above.

If Respondent ever files an application for relicensure in the State of California, the Board shall treat it as a petition for reinstatement of a revoked license. Respondent must comply with all laws, regulations and procedures for reinstatement of a revoked license at the time that the application for relicensure or petition for reinstatement is filed.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 10, 2018 at 5:00 p.m.

It is so ORDERED July 11, 2018.



FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
Kimberly Kirchmeyer
Executive Director

1 XAVIER BECERRA
Attorney General of California
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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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10 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2016-024066

14 Roger Dale Robinett, M.D.
2759 Palmetto Drive
15 Carlsbad, CA 92009

ACCUSATION

16 Physician's and Surgeon's Certificate
No. G 87294,

17 Respondent.
18

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about August 6, 2004, the Board issued Physician's and Surgeon's Certificate
25 No. G 87294 to Roger Dale Robinett, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate expired on July 31, 2014, and has not been renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“...”

5. Section 2234 of the Code states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“...”

1 6. Unprofessional conduct under section 2234 of the Code is conduct which breaches the
2 rules or ethical code of the medical profession, or conduct which is unbecoming a member in
3 good standing of the medical profession, and which demonstrates an unfitness to practice
4 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

5 7. Section 2236 of the Code states:

6 “(a) The conviction of any offense substantially related to the qualifications,
7 functions, or duties of a physician and surgeon constitutes unprofessional conduct
8 within the meaning of this chapter. The record of conviction shall be conclusive
9 evidence only of the fact that the conviction occurred.

10 “(b) The district attorney, city attorney, or other prosecuting agency shall notify
11 the Division of Medical Quality¹ of the pendency of an action against a licensee
12 charging a felony or misdemeanor immediately upon obtaining information that the
13 defendant is a licensee. The notice shall identify the licensee and describe the crimes
14 charged and the facts alleged. The prosecuting agency shall also notify the clerk of
15 the court in which the action is pending that the defendant is a licensee, and the clerk
16 shall record prominently in the file that the defendant holds a license as a physician
17 and surgeon.

18 “(c) The clerk of the court in which a licensee is convicted of a crime shall,
19 within 48 hours after the conviction, transmit a certified copy of the record of
20 conviction to the board. The division may inquire into the circumstances surrounding
21 the commission of a crime in order to fix the degree of discipline or to determine if
22 the conviction is of an offense substantially related to the qualifications, functions, or
23 duties of a physician and surgeon.

24 ///

25
26 ¹ California Business and Professions Code section 2002, as amended and effective
27 January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in
28 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical
Board of California,” and references to the “Division of Medical Quality” and “Division of
Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
2 deemed to be a conviction within the meaning of this section and Section 2236.1. The
3 record of conviction shall be conclusive evidence of the fact that the conviction
4 occurred.”²

5 8. Section 2239 of the Code states:

6 “(a) The use or prescribing for or administering to himself or herself, of any
7 controlled substance; or the use of any of the dangerous drugs specified in Section
8 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous
9 or injurious to the licensee, or to any other person or to the public, or to the extent that
10 such use impairs the ability of the licensee to practice medicine safely or more than
11 one misdemeanor or any felony involving the use, consumption, or
12 self-administration of any of the substances referred to in this section, or any
13 combination thereof, constitutes unprofessional conduct. The record of the conviction
14 is conclusive evidence of such unprofessional conduct.

15 “(b) A plea or verdict of guilty or a conviction following a plea of nolo
16 contendere is deemed to be a conviction within the meaning of this section. The
17 Division of Medical Quality may order discipline of the licensee in accordance with
18 Section 2227 or the Division of Licensing may order the denial of the license when
19 the time for appeal has elapsed or the judgment of conviction has been affirmed on
20 appeal or when an order granting probation is made suspending imposition of
21 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
22 the Penal Code allowing such person to withdraw his or her plea of guilty and to enter
23 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
24 complaint, information, or indictment.”

25
26 ² There is a nexus between a physician's use of alcoholic beverages and his fitness to
27 practice medicine, established by the Legislature in section 2239, “in all cases where a licensed
28 physician used alcoholic beverages to the extent or in such a manner as to pose a danger to
himself or others.” (*Watson v. Superior Court (Medical Board)* (2009) 176 Cal.App.4th 1407,
1411.)

1 9. Section 118 of the Code states:

2 “... ”

3 “(b) The suspension, expiration, or forfeiture by operation of law of a license
4 issued by a board in the department, or its suspension, forfeiture, or cancellation by
5 order of the board or by order of a court of law, or its surrender without the written
6 consent of the board, shall not, during any period in which it may be renewed,
7 restored, reissued, or reinstated, deprive the board of its authority to institute or
8 continue a disciplinary proceeding against the licensee upon any ground provided by
9 law or to enter an order suspending or revoking the license or otherwise taking
10 disciplinary action against the licensee on any such ground.

11 “... ”

12 10. California Code of Regulations, title 16, section 1360, states:

13 “For the purposes of denial, suspension or revocation of a license, certificate or
14 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
15 or act shall be considered to be substantially related to the qualifications, functions or
16 duties of a person holding a license, certificate or permit under the Medical Practice
17 Act if to a substantial degree it evidences present or potential unfitness of a person
18 holding a license, certificate or permit to perform the functions authorized by the
19 license, certificate or permit in a manner consistent with the public health, safety or
20 welfare. Such crimes or acts shall include but not be limited to the following:
21 Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
22 violation of, or conspiring to violate any provision of the Medical Practice Act.”

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Crime Substantially Related to the
3 Qualifications, Functions, or Duties of a Physician and Surgeon)

4 11. Respondent has subjected his Physician's and Surgeon's Certificate No. G 87294 to
5 disciplinary action under sections 2227 and 2234, as defined by section 2236, of the Code, in that
6 he has been convicted of a crime substantially related to the qualifications, functions, or duties of
7 a physician, as more particularly alleged hereinafter:

8 12. On or about June 26, 2016, Officers J.A. and E.C. of the California Highway Patrol
9 observed Respondent's vehicle stopped at the limit line at a red light at or near Sea World Drive
10 in San Diego, California. Respondent's vehicle slowly began moving into the intersection against
11 the red light, causing oncoming drivers to honk their horns at Respondent and maneuver their
12 vehicles around Respondent's vehicle. The officers activated their overhead red lights and
13 positioned their vehicle behind Respondent's vehicle. Respondent was instructed to yield and,
14 after several commands, finally did so.

15 13. Upon contact with Respondent, Officer J.A. smelled the odor of alcohol coming from
16 inside Respondent's vehicle and observed that Respondent had glassy eyes, sluggish movements,
17 and slow speech. Respondent told Officer J.A. that he was on his way to pick up his mother-in-
18 law at the SEA-TAC airport in Seattle, Washington. Officer J.A. asked Respondent to exit his
19 vehicle and they moved to the sidewalk next to the rear of the vehicle. Officer J.A. continued to
20 smell the odor of alcohol coming from Respondent's breath and person. Officer J.A. asked
21 Respondent to provide his identification, and Respondent provided a government-issued
22 identification card from Mexico. Respondent told Officer J.A. that he left his home in Carlsbad,
23 California and headed north towards the airport in Seattle, Washington, but became lost. He
24 stated that he was supposed to pick up his mother-in-law approximately one and a half hours ago.
25 When asked if he knew where he was presently, Respondent told Officer J.A. that he was in the
26 State of Washington. Respondent had difficulty comprehending that he was still in the State of
27 California and insisted that he was in Washington.

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1 14. Based upon Respondent's objective signs and symptoms of impairment, Officers J.A.
2 and E.C. requested assistance and Officer Z.F. responded. Respondent told Officer Z.F. that he
3 had consumed one to two glasses of wine at dinner. Officer Z.F. observed the odor of alcohol
4 coming from Respondent's breath and person, slurred and thick speech, and red eyes. Officer
5 Z.F. administered standardized field sobriety tests, which Respondent failed to complete
6 satisfactorily. Officer Z.F. placed Respondent under arrest for driving under the influence of
7 alcohol. Respondent submitted to a breath test, which yielded a blood alcohol concentration
8 (BAC) level of 0.160% and 0.158%, respectively.

9 15. On or about August 2, 2016, the San Diego County District Attorney filed a criminal
10 complaint against Respondent in the matter of *The People of the State of California v. Roger Dale*
11 *Robinett*, Case No. M220364. Count One of the complaint charged Respondent with driving
12 under the influence of alcohol, in violation of California Vehicle Code section 23152(a), a
13 misdemeanor. Count Two of the complaint charged Respondent with driving while having a
14 BAC level of 0.08% or more, in violation of California Vehicle Code section 23152(b), a
15 misdemeanor. Count Three of the complaint charged Respondent with driving without a valid
16 California driver's license, in violation of California Vehicle Code section 12500(a), a
17 misdemeanor.

18 16. On or about October 26, 2016, Respondent was convicted upon his plea of guilty to
19 Count Two of the complaint. On or about the same date, Respondent was sentenced to probation
20 for five years on the following terms and conditions: (1) pay various fines and fees; (2) enroll in
21 and complete a Public Service Program; (3) do not drive a motor vehicle with any measureable
22 amount of alcohol or drugs in his blood; (4) submit to any test at the request of a peace officer for
23 the detection of alcohol or drugs in the blood; (5) do not violate any laws regarding driving a
24 motor vehicle while under the influence or in the possession of alcohol, drugs, or both; (6) do not
25 drive a motor vehicle without a valid license liability insurance; (7) enroll in and complete the
26 First Conviction Program; and (7) placement of the ignition interlock device for one year.

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1 17. On or about August 28, 2017, an investigator for the Board mailed a letter to
2 Respondent's address of record, requesting a Letter of Explanation from Respondent regarding his
3 June 26, 2016, arrest. In addition, the letter requested that Respondent complete a Criminal
4 Action Reporting form regarding the October 26, 2016, conviction. The letter requested
5 Respondent's response by September 15, 2017. On or about October 2, 2017, the Board received
6 the original letter mailed to Respondent on August 28, 2017. The envelope was marked "Return
7 to Sender - Unclaimed - Unable to Forward."

8 18. On or about October 2, 2017, the Board investigator called and left a voice message
9 with Respondent. On or about October 9, 2017, the Board investigator spoke with Respondent
10 regarding the requested Letter of Explanation. Respondent stated that he was living in Mexico
11 and was currently traveling in Europe. He further stated that he was no longer practicing
12 medicine in California and did not have a valid California medical license. Respondent stated
13 that he was "done with California" and hung up the phone.

14 19. On or about October 17, 2017, the Board investigator called Respondent again and
15 left a voice message, reiterating the request for a Letter of Explanation.

16 20. On or about November 9, 2017, having received no response from Respondent, the
17 Board investigator mailed a letter to Respondent's address of record, regarding scheduling an
18 interview to discuss his June 26, 2016, arrest. The letter requested that Respondent contact the
19 Board investigator by November 22, 2017. The letter was also emailed to Respondent. On or
20 about November 9, 2017, the email was returned as "Undeliverable" and, on or about December
21 13, 2017, the Board received the original letter mailed to Respondent on November 9, 2017,
22 which was marked "Return to Sender - Unclaimed - Unable to Forward."

23 21. To date, Respondent has not provided a Letter of Explanation to the Board and he has
24 not responded to the Board's request for an interview.

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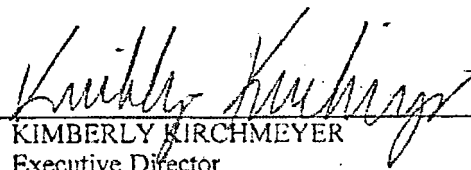
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 87294, issued to Respondent Roger Dale Robinett, M.D.;
2. Revoking, suspending or denying approval of Respondent Roger Dale Robinett, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;
3. Ordering Respondent Roger Dale Robinett, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: May 21, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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